

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LEONARDO VALDEZ CRUZ,

Plaintiff,

ORDER

10-CV-2940(JS)(ARL)

-against-

NASSAU COUNTY, et al.,

Defendants.

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APPEARANCES:

For Plaintiff: Leonardo Valdez Cruz, pro se
Prisoner No. 10A3105
Great Meadow Correctional Facility
P.O. Box 51
Comstock, NY 12821

For Defendants: Andrew Kenneth Preston, Esq.
Office of the Nassau County Attorney
1 West Street
Mineola, NY 11501

SEYBERT, District Judge:

On July 11, 2011, the Court "afford[ed] Plaintiff one final opportunity to file an Amended Complaint," and warned that "if the Court does not receive an Amended Complaint, labeled as such, by [August 1, 2011], Plaintiff's Complaint will be dismissed with prejudice." (Docket No. 21.) On August 1, 2011, rather than comply with the Court's July 11 Order, Plaintiff sent a letter to the Court stating that he has "[a]mended [his] complaint and sent the courts [his] notarized Amended Complaint on two seperate [sic] occations [sic]." (Docket No. 22.)

The Court has reviewed the entire docket and has found no Amended Complaint labeled as such. His original Complaint was dismissed with leave to amend on November 15, 2010. (Docket No. 10.) On December 10, 2010, Plaintiff requested an extension of time to file an Amended Complaint (Docket No. 12) which was granted on December 15, 2011 and again extended on February 8, 2011 (Docket No. 14). On March 8, 2011, Plaintiff filed a "Motion to Amend Complaint," which included a Notice of Motion and a Declaration in Support. (Docket No. 16.) On March 14, 2011, Plaintiff filed an identical "Motion to Amend Complaint," dated March 8, 2011, but this time included an additional document labeled "Complaint."¹ (Docket No. 17.) On June 7, 2011, the Court denied Plaintiff's motions to amend as moot, as he was already granted leave to file an amended complaint. (Docket No. 19.) On June 27, 2011, Plaintiff filed another "Motion to Amend Complaint," identical to the March 8 motion, which included exact copies of the March 8 Notice of Motion and Declaration in Support. (Docket No. 20.) No Amended Complaint was attached. On July 11, 2011, the motion to amend was denied as moot, precipitating Plaintiff's most recent letter.

¹ The Court notes that the Declaration in Support of both the March 8 and March 14 motions to amend state that "a copy of the original Complaint is being attached to this motion" (Pl. Decl. ¶ 4) and that an "amended Complaint" is also "attached" (Id. at signature page.) The March 8 filing attaches neither a Complaint nor an Amended Complaint. The March 14 filing attaches a "Complaint."

Contrary to Plaintiff's assertion, he has never filed an Amended Complaint labeled as such. The Court assumes that Plaintiff is referring to the "Complaint" attached to his March 14, 2011 filing (Docket No. 17) when he states that he has already submitted an Amended Complaint. Given Plaintiff's August 1 letter and the Court's review of the docket, the Court will construe the Complaint at pages 5-8 of Docket Number 17 as Plaintiff's Amended Complaint. The Clerk of the Court is directed to docket pages 5-8 of Docket Number 17 as a separate docket entry titled Amended Complaint.

The Clerk of the Court also is directed to forward to the United States Marshal for the Eastern District of New York copies of Plaintiffs' Summons, Complaint, and this Order for service upon the Defendants without prepayment of fees. Furthermore, the Clerk must mail a copy of this Order to the Plaintiffs.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: August 19, 2011
Central Islip, New York